

Regular Session, 2014

SENATE BILL NO. 292

BY SENATOR MORRELL AND REPRESENTATIVE MORENO

DIVORCE. Provides relative to divorce proceedings. (8/1/14)

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AN ACT

To amend and reenact Civil Code Articles 103, 103.1, 112, and 113 and to enact Civil Code Article 118 and R.S. 9:327, relative to divorce proceedings; to provide grounds for immediate divorce, interim support, and final support in certain instances involving domestic abuse; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 103, 103.1, 112, and 113 are hereby amended and reenacted and Civil Code Article 118 is hereby enacted to read as follows:

Art. 103. Judgment of divorce; other grounds

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

- (1) The spouses have been living separate and apart continuously for the requisite period of time, in accordance with Article 103.1, or more on the date the petition is filed;
- (2) The other spouse has committed adultery; ~~or,~~
- (3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

1 **divorce and the court determines that party was the victim of domestic abuse**
2 **committed during the marriage by the other party, that spouse shall be awarded**
3 **final periodic support or a lump sum award, at the discretion of the court, in**
4 **accordance with Paragraph C of this Article.**

5 C. The court shall consider all relevant factors in determining the amount
6 and duration of final support. ~~Those factors may include,~~ **including:**

7 (1) The income and means of the parties, including the liquidity of such
8 means.

9 (2) The financial obligations of the parties.

10 (3) The earning capacity of the parties.

11 (4) The effect of custody of children upon a party's earning capacity.

12 (5) The time necessary for the claimant to acquire appropriate education,
13 training, or employment.

14 (6) The health and age of the parties.

15 (7) The duration of the marriage.

16 (8) The tax consequences to either or both parties.

17 **(9) The existence, effect, and duration of any act of domestic abuse**
18 **committed by the other spouse upon the claimant, regardless of whether the**
19 **other spouse was prosecuted for the act of domestic violence.**

20 ~~C.D.~~ The sum awarded under this Article shall not exceed one-third of the
21 obligor's net income; **however, where support is awarded pursuant to Paragraph**
22 **B of this Article, the sum awarded may exceed one-third of the obligor's net**
23 **income.**

24 Art. 113. Interim spousal support allowance pending final spousal support award

25 A. Upon motion of a party or when a demand for final spousal support is
26 pending, the court may award a party an interim spousal support allowance based on
27 the needs of that party, the ability of the other party to pay, and the standard of living
28 of the parties during the marriage, which award of interim spousal support allowance
29 shall terminate upon the rendition of a judgment of divorce.

1 **conducted by an independent court-appointed mental health professional who**
 2 **is an expert in the field of domestic abuse. The mental health professional shall**
 3 **have no family, financial, or prior medical relationship with either party or**
 4 **their attorneys of record. The mental health professional shall provide the**
 5 **court and the parties with a written report of his findings.**

The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

Morrell (SB 292)

Present law (C.C. Art. 103) provides grounds for immediate divorce.

Proposed law adds the following as grounds for immediate divorce:

- (1) When a spouse or child has been physically or sexually abused by the other spouse.
- (2) When a protective order or injunction has been issued against the other spouse.

Present law (C.C. Art. 103.1) provides required time delays for certain grounds of divorce.

Proposed law deletes the following as grounds for divorce after 180 days have passed:

- (1) When a spouse or child has been physically or sexually abused by the other spouse.
- (2) When a protective order or injunction has been issued against the other spouse.

Present law (C.C. Art. 112) authorizes the court to award final spousal support and provides a list of considerations for the court in determining the amount of the final award. Further limits a final award to an amount not greater than one-third of the obligor's net income.

Proposed law retains present law and requires the court to consider the existence, effect, and duration of domestic abuse during the marriage in determining a final award amount.

Proposed law provides for rights to seek other remedies. However, if a party is awarded final spousal support pursuant to proposed law, that party shall be barred from asserting any claims related to the domestic abuse considered by the court in awarding final spousal support.

Proposed law requires the court to award final spousal support when the court finds that the spouse seeking divorce was the victim of domestic abuse committed by the other spouse during the marriage. Further authorizes the court to award a final award in an amount greater than one-third of the obligor's net income when the final award is made pursuant to C.C. Art. 112(B).

Proposed law (R.S. 9:327) requires the court to consider all criminal convictions of the obligor spouse committed against the obligee spouse during the course of the marriage in determining whether the obligee was the victim of acts of domestic abuse of the obligor. Further provides that in the absence of a criminal conviction, the court may order an evaluation of both parties which may be used to assist the court in determining the existence and nature of the alleged domestic abuse. Such evaluation shall be conducted by an

independent mental health professional who is an expert in the field of domestic abuse.

Effective August 1, 2014.

(Amends C.C. Arts. 103, 103.1, 112, and 113; adds C.C. Art. 118 and R.S. 9:327)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Technical.
2. Changes "shall order" to "may order" in court's authority to order an evaluation of both parties to assist the court in determining the existence of domestic abuse.